

Thursday, June 30, 2005

The Board met at its offices at 450 N Street, Sacramento, at 10:15 a.m., with Mr. Chiang, Chair, Mr. Parrish, Vice Chair, Ms. Yee and Mr. Leonard present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

SUPERIOR ACCOMPLISHMENT AWARD PRESENTATIONS

Ramon Hirsig, Executive Director, and Members of the Board presented the 2004-05 Sustained Superior Accomplishment Awards to employees in recognition of their outstanding achievements.

SALES AND USE TAX APPEALS HEARINGS

Barr-Mullin, Inc., 82997

11-20-91 to 6-30-99, \$23,722.75 Tax, \$00.00 Penalty

For Petitioner:

Paul Nelson, Representative

Alexander "Sandy" Mullin, Taxpayer

Courtney Mullin, Taxpayer

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the three remaining disallowed claimed nontaxable sales of machinery are in fact nontaxable sales.

Action: Upon motion of Mr. Parrish, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be granted in regards to the OEM invoice and that the remainder be submitted for decision.

International Investment Properties, Inc., 144677

7-1-98 to 12-31-00, \$65,847.17 Tax, \$7,024.61 Negligence Penalty, \$7,024.61 Finality Penalty

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the audited ratio of taxable to total store merchandise purchases is excessive.

Whether the evidence warrants further adjustments to the audited taxable store markup.

Whether the evidence supports lowering the tax liability because taxpayer asserts it was initially informed by the Sales and Use Tax Department that the tax liability was approximately \$57,000.00.

Whether the negligence penalty was properly applied.

Whether the finality penalty applies.

Action: The Board postponed this matter to the next Sacramento Board meeting.

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Nortel Networks, Inc., 140851, 150425

1-1-94 to 12-31-97, \$6,319,640.00 Tax

1-1-96 to 6-30-01, \$35,587,867.40 Claim for Refund

For Petitioner:

Suzanne Beaudelaire, CPA

Jeff Hendrickson, CPA

Jeffrey G. Varga, Attorney

Patricia Yu, Witness

For Sales and Use Tax Department:

Randy Ferris, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether charges coded as ENG were erroneously regarded as taxable in the audit.

Whether petitioner is entitled to relief based upon reliance on erroneous advice in a prior audit.

Whether petitioner transferred prewritten software in tangible form pursuant to technology transfer agreements.

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Rosalie Wardell, 115009

10-1-96 to 3-31-00, \$8,541.50 Tax, \$00.00 Failure to File Penalty

For Petitioner:

Rosalie Wardell, Taxpayer

Marcus Wardell, Witness

For Sales and Use Tax Department:

Susan Wengel, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the evidence warrants further adjustments to the audited taxable sales.
Whether any of petitioner's contracts constituted technology transfer agreements.
Whether the evidence supports further adjustments for tax-paid purchases resold.

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

Upon motion of Mr. Leonard, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Leonard and Ms. Yee voting yes, Mr. Chiang voting no, Ms. Mandel abstaining, the Board ordered that the amnesty penalty be abated.

The Board recessed at 12:15 p.m. and reconvened at 1:35 p.m. with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

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CHIEF COUNSEL MATTERS**RULEMAKING--PROPERTY TAX****Request for authorization to publish proposed Property Tax Rules 140, 140.1, and 140.2, related to welfare exemption for low-income housing properties, and 143, related to irrevocable dedication and dissolution clauses**

Selvi Stanislaus, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding authorization to publish Rule 140, *Welfare Exemption Requirements for Low-Income Housing Properties*; Rule 140.1, *Requirements of Managing General Partner of Limited Partnership for Welfare Exemption for Low-Income Housing Properties*; Rule 140.2, *Requirements for Supplemental Clearance Certificate for Limited Partnership for Welfare Exemption for Low-Income Housing Properties*; and, Rule 143, *Requirements for Irrevocable Dedication Clause and Dissolution Clause for Organizational Clearance Certificate for Welfare Exemption*. (Exhibit 6.2.)

Speakers: Cathy Colt, Riverside County Assistant Assessor, also with California Assessors' Association
Lawrence E. Stone, Santa Clara County Assessor
David Corsi, Counsel, Nixon Peabody LLP
Rob Wiener, Director, California Coalition for Rural Housing
Greg Langer, Partner, Resch Polster
Lenny Goldberg, Executive Director, California Tax Reform Association
Joel Rice, Law Office of Patrick Sabelhaus, California Council on Affordable Housing
Ronne Lynn Thielen, Related Capital Company
Mark Hyatt, Managing Member, DKF Communities

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel voting no, the Board deferred consideration of this matter.

Exhibits to these minutes are incorporated by reference.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD JUNE 30, 2005

Barr-Mullin, Inc., 82997

Final Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the remaining issues be redetermined as recommended by the Appeals Division.

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Nortel Networks, Inc., 140851, 150425

Final Action: Mr. Parrish moved that the petition be granted in regards to the \$15,662,310.00, which is the optional engineering services, otherwise redetermine the remainder as recommended by the Appeals Division. The motion failed for lack of a second.

The Board deferred consideration of this matter to the next day.

SALES AND USE TAX APPEALS HEARINGS

Charles C. Kelley, 220111

7-1-99 to 6-30-02, \$41,922.38 Tax

For Petitioner:

Charles Chris Kelly, Taxpayer

Daniel Thompson, CPA

For Sales and Use Tax Department:

Steve Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issues: Whether petitioner is liable for use tax with respect to sales to known California residents because he did not overcome the presumption set forth in Revenue and Taxation Code section 6247.

Whether the sample test results should be projected throughout the audit period.

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petition be submitted for decision.

Davinder Singh Pabla, Mohinder Singh Pabla, Dial Kaur Pabla, 194819, 205731

4-1-99 to 9-30-99, \$3,200.18 Tax, \$640.03 Negligence and Finality Penalties

10-1-99 to 3-31-02, \$14,331.25 Tax, \$1,433.15 Negligence and Finality Penalties

For Petitioner:

Rattan Dhaliwal, Attorney

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether it is illegal to use an observation test to establish audited taxable sales.

Whether the evidence shows that the observation test results in excessive audited taxable sales.

Whether the negligence penalty was properly applied.

Whether relief from the penalty for failure to timely pay the determination (finality penalty) is warranted.

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petition be submitted for decision.

Tri-Air, Inc., 240935

1-1-95 to 12-31-01, \$15,031.73 Tax, \$1,503.20 Failure to File Penalty

For Petitioner:

Charles L. Robinson, Taxpayer

Bill Fanucchi, CPA

For Sales and Use Tax Department:

Steve Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

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Issues: Whether petitioner is liable for use tax measured by unreported ex-tax purchases from out-of-state vendors.

Whether relief from the penalty for failure to file a return is warranted.

Whether relief from the interest is warranted.

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petition be returned to the district for a reaudit.

Synergem, Inc., 217118

1-1-99 to 12-31-01, \$7,538.38 Tax

For Petitioner:

Chris Rosinski, Accountant

For Sales and Use Tax Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the disallowed resale deductions were in fact valid sales for resale.

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petition be submitted for decision.

The Board recessed at 4:25 p.m. and reconvened at 4:37 p.m. with Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

Harjinder S. Birdi, 215318

4-19-01, \$5,189.19 Tax, \$518.92 Failure to File Penalty

For Petitioner:

Harjinder S. Birdi, Taxpayer

For Sales and Use Tax Department:

Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is liable for use tax measured by the purchase price of a vehicle.

Whether relief from the penalty for failure to file a return is warranted.

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the penalties be deleted, otherwise redetermine as recommended by the Appeals Division.

PUBLIC HEARINGS

Timber Harvest Values

Mickie Stuckey, Chief, County Property Tax Division, Property and Special Taxes Department, was available to answer questions regarding the Timber Harvest Values. On or before June 30, 2005, the Board will estimate the immediate harvest value and adopt schedules for each species or sub-classification of timber harvested between July 1 and December 31, 2005. (Revenue and Taxation Code section 38204(a).) (Exhibit 6.3.)

Speakers: Speakers were invited to address the Board but there were none.

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Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board adopted the Timber Harvest Values.

PROPERTY TAX MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

Audit

NOS Communications, Inc., (2416)

2001-2004, \$3,800,000.00 Escaped Assessment, \$380,000.00 Penalties, \$674,700.00 In-lieu Interest

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating, in accordance with Government Code section 7.9, Mr. Chiang absent, the Board adopted the audit escaped assessment, plus penalties and in-lieu interest, as recommended by staff.

ADMINISTRATIVE SESSION

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Mr. David Gau, Deputy Director, Property and Special Taxes Department, reported on the status of the Alternative Cigarette Tax Stamp Project. (Exhibit 6.4.)

CHIEF COUNSEL MATTERS

RULEMAKING—SPECIAL TAX

Early re-adoption of Emergency Regulation 4056.1, Expiration of Heat-Applied Decal Tax Stamps with Amendments

Kristine Cazadd, Chief Counsel, Legal Department, made introductory remarks regarding the early re-adoption of Emergency Regulation 4056.1, *Expiration of Heat-Applied Decal Tax Stamps* with amendments. (Exhibit 6.5.)

Speakers: Russ LaCoste, Vice President with SICPA Product Security
John McComas, Account Director, Standard Register (Exhibit 6.6.)
Dave Woodward, President/CEO, Assure Digitax
Dennis Loper, Executive Director, California Distributors Association
Frank Doljack, Director, Assure Digitax

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Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board re-adopted with amendments Emergency Regulation 4056.1, *Expiration of Heat-Applied Decal Tax Stamps*, which authorizes, beginning July 1, 2005 for a period of 90 days, the sale of the heat-applied decal tax stamps and the application of the heat-applied decal tax stamps if three specific conditions are met. The Board adopted additional language authorizing the distributors to pre-purchase a supply of the old stamps for possible application pursuant to the terms of the amended regulation and a provision that allows for automatic verification of machine in-operability if the vendor does not verify in-operability to the Board within four hours of vender notification by the distributor.

ADMINISTRATIVE SESSION

OTHER ADMINISTRATIVE MATTERS

Adoption of the 2005-06 Private Railroad Car Tax Rate

David Hayes, Manager, Research and Statistics Section, Legislative Division, was available to answer questions regarding the 2005-06 private railroad car tax rate. (Exhibit 6.7.)

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Chiang absent, the Board adopted a rate for the 2005-06 private railroad car tax of 1.092 percent.

Adoption of the 2005 Private Railroad Car Roll

Stanley Siu, Chief, Valuation Division, Property and Special Taxes Department, was available to answer questions regarding the 2005 Private Railroad Car Roll. (Exhibit 6.8.)

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Chiang absent, the Board adopted the 2005 Private Railroad Car Roll.

The Board adjourned at 5:50 p.m.

The foregoing minutes are adopted by the Board on October 25, 2005.

Note: The following cases were removed from the calendar prior to the meeting: *Quality Scientific Plastics, Inc.*, 242464; and, *William E. Wehrli*, 253121.

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